

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KEVIN SUTTON,

Case No. 3:21-cv-00435-MMD-CLB

Petitioner,

ORDER

v.

WARDEN K. OLSEN, *et al.*,

Respondents.

Before the Court is Petitioner Kevin Sutton's application to proceed *in forma pauperis* ("IFP Application"). (ECF No. 1.) Sutton is a *pro se* prisoner in the custody of the Nevada Department of Corrections ("NDOC") and is currently housed at Warm Springs Correctional Center. A *pro se* petitioner is required to file his petition for writ of habeas corpus under 28 U.S.C. § 2254 on the Court's approved form. See LSR 3-1; Habeas Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts.

Sutton submitted his petition (ECF No. 1-1) on the wrong form. Sutton filed his petition under 28 U.S.C. § 2241. However, he is in custody pursuant to a state court judgment of conviction, so the only proper basis for his claims is 28 U.S.C. § 2254. See *White v. Lambert*, 370 F.3d 1002, 1005-07 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546, 555 (9th Cir. 2010) (en banc). The form is important as it provides the Court with necessary information to conduct preliminary review of the petition. Accordingly, Sutton must, within 45 days of the date of this order, file an amended petition for habeas corpus relief on the Court's form.¹ In doing so, Sutton is advised to follow the instructions on the form and to refrain from lengthy legal or factual arguments.

¹Sutton at all times remains responsible for calculating the applicable statute of limitations. By ordering Sutton to amend his petition, the Court makes no finding or representation that either the original or amended petition will be considered timely.

